

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
GREENEVILLE

MARK PAUL,

Plaintiff,

v.

CITY OF JOHNSON CITY, TENNESSEE,
POLICE CHIEF JOHN LOWRY,
and SGT. SCOTT JENKINS,

Defendants.

No. 2:11-CV-00247

JUDGE J. RONNIE GREER

MAGISTRATE JUDGE DENNIS H. INMAN

ANSWER

Come now the defendants, City of Johnson City, Police Chief John Lowry and Sgt. Scott Jenkins to answer the *Complaint* filed against them and would respond as follows:

FIRST DEFENSE

To the extent Police Chief John Lowry and Sgt. Scott Jenkins are sued in their official capacities, any such claim is the functional equivalent of a suit against the municipality and is a redundant and superfluous claim subject to dismissal.

SECOND DEFENSE

To the extent Police Chief John Lowry and Sgt. Scott Jenkins are sued in their individual capacities, qualified immunity from suit is affirmatively asserted.

THIRD DEFENSE

The *Complaint* fails to state a claim upon which relief can be granted. *Federal Rule of Civil Procedure* 12(b)(6).

FOURTH DEFENSE

To the extent the *Complaint* seeks to assert a claim under state law, all immunities, defenses, limitations and restrictions are affirmatively asserted both under the Governmental Tort Liability Act, being *Tenn. Code Ann. § 29-20-201 et seq.* and the common law.

FIFTH DEFENSE

As to any state law claim, the doctrine of comparative fault is affirmatively asserted. It is averred that Mr. Paul made an unreasonable and foolish decision with respect to his refusal to provide a signature. Any damages he may have suffered are as a consequence of his own choice and preference to be taken into custody in lieu of receiving the citation offered.

ANSWER

1. Upon information and belief, it is admitted that Mr. Paul is a citizen and resident of Greene County, Tennessee. These responding defendants are without sufficient knowledge or information to admit or deny Mr. Paul's occupation or employment status.

2. It is admitted that the City of Johnson City is a duly incorporated municipality in and of the State of Tennessee. Sufficient service of process as to the City is admitted.

3. It is admitted that John Lowry is the appointed Chief of Police for the City of Johnson City and sufficient service of process as to him is admitted.

4. It is admitted that Sgt. Scott Jenkins is a sworn law enforcement officer employed by the City of Johnson City and assigned to its Police Department. Service of process as to Sgt. Jenkins is admitted to be sufficient.

5. It is admitted that the City of Johnson City operates a police department. It is denied that Mr. Paul has been "wronged" as a result of any operational policies promulgated by

Chief John Lowry or otherwise. It is further denied that the doctrine of *respondeat superior* has any applicability under state or federal law.

6. Jurisdiction in the State court is denied based on the allegations in the *Complaint*, original jurisdiction lies with the Federal Court.

7. It is admitted that Mr. Paul was subjected to a traffic stop on August 5, 2010 because he was not wearing a seat belt and was operating his vehicle with expired registration.

8. It is admitted that Sgt. Jenkins prepared a citation for Mr. Paul's misdemeanor traffic violations and requested Mr. Paul sign an electronic PDA device acknowledging (1) the receipt of the citation (2) assuring his appearance in the municipal court to respond to the charges.

9. The allegations contained in paragraph 9 of the *Complaint* are denied as stated. It is admitted that Mr. Paul refused to provide a signature, stating that the law did not require him to do so and that the policy of the Johnson City Police Department requiring such a signature needed to be challenged. It is denied that Mr. Paul was arrested for refusing to sign the "electronic box." Once stopped for a misdemeanor traffic violation, Mr. Paul was not free to leave. However, Mr. Paul was offered a citation in lieu of arrest, but he declined to accept the citation by acknowledging his acceptance with his signature.

10. It is admitted that following Mr. Paul's refusal to sign the PDA (Personal Data Assistant) and following the efforts of Officer Jenkins to convince him to provide his signature he was transported to the Washington County Detention Center where he was booked, posted bond and released.

11. These responding defendants are without knowledge or information to admit or deny, at this time, if Mr. Paul's photograph appeared in a publication referred to in the

Complaint as “Tri-Cities Busted,” but it is denied that any of the defendants are associated with “Tri-Cities Busted” or had any communication with such publication. These responding defendants are without knowledge or information to admit or deny the allegations that the plaintiff suffered embarrassment, humiliation, loss of business, reputation or income and proof of these allegations is requested.

12. It is denied that Police Chief John Lowry has implemented policies contrary to law or that such policies violated the civil rights of Mr. Paul.

13. It is denied that Mr. Paul was subjected to false imprisonment, unlawful arrest, excessive force, assault and battery, negligent infliction of emotional distress or negligent abuse of power. It is averred that these allegations are frivolous and sanctionable. These responding defendants are without sufficient knowledge or information to admit or deny whether the plaintiff has suffered any damage to his personal or business reputation or loss of dignity and proof of these allegations is requested.

Now having fully responded to the *Complaint*, the defendants would seek their dismissal or judgment in their favor with all costs being taxed to the plaintiff.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 23RD, 2011, a copy of the foregoing *Answer* was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

s/K. Erickson Herrin

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